

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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JOSEPH AMORE,

Plaintiff,

-against-

CITY OF ITHACA and ANDREW NOVARRO,

Defendants.

**DEFENDANT’S RESPONSE TO  
PLAINTIFF’S STATEMENT  
OF FACTS**

Civil Action No.: 04-CV-0176

Chief Judge Frederick J. Scullin, Jr.

Magistrate Judge David E. Peebles  
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1. Defendants admit the allegations of Plaintiff’s Statement of Facts paragraphs 1, 2, 3, 4, 6, 7, 10, 11, 13, 14, and 16.
2. Regarding paragraph 5 defendants admit Mr. Amore had a right to be in Stewart Park.
3. Regarding paragraph 8 and 9 defendants point out that Mr. Amore was given an appearance ticket and permitted to leave without bail, physical arrest or seizure, fingerprinting, booking etc.
4. Regarding paragraph 15 defendants admit the transcript of testimony, and that training regarding the constitutionality of the section in question took place after dismissal of the charges against Mr. Amore.

5. Regarding paragraph 17 defendants object to the characterization of the testimony of Prosecutor Margaret McCarthy as set forth in paragraph 16.

6. Regarding paragraph 18 defendants deny the allegation that Officer Christopher Miller had no training in law as the basic course included training in various statutes and received updates from the office of the District Attorney. Defendants admit the transcript of testimony as set forth.

7. Regarding paragraph 19 defendant points out that the *Uplinger* case found Penal Law Section 240.35(3) unconstitutional based on facts alleging loitering for purposes of homosexual activity between *consenting adults*. The decision stated that prohibition against loitering for purposes of soliciting *unwanted* homosexual activity, could be prohibited by the Legislature. The Legislature took no action, and said statute is still in the official New York Penal Law without change.

DATED: February 2, 2006

/s/ G. Peter Van Zandt

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Case No. 04-CIV-0176

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***CERTIFICATE OF SERVICE***

I hereby certify that on February 2, 2006 I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. Edward Kopko, Esq.
2. Richard Wallace, Esq.

And, I hereby certify that I have mailed by the United States Postal Service the document to the following non-CM/ECF Participants:

- 1.
- 2.

/s/ Carla A. Masse

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**CARLA A. MASSE**

Sworn to before me this  
2nd day of February, 2006.

/s/ G. Peter Van Zandt

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Notary Public